



**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE  
STATE OF CALIFORNIA**

**FILED**

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Pacific Gas and Electric Company (U 39-E), for  
Approval of the 2006 – 2008 Energy Efficiency  
Programs and Budget.

Application 05-06-004  
(Filed June 1, 2005)

Southern California Gas Company (U 904-G), for  
Approval of Natural Gas Energy Efficiency  
Programs and Budgets for Years 2006 through  
2008.

Application 05-06-011  
(Filed June 1 2005)

Southern California Edison Company (U 338-E),  
for Approval of its 2006 – 2008 Energy  
Efficiency Program Plans and associated Public  
Goods Charge (PGC) and Procurement Funding  
Requests.

Application 05-06-015  
(Filed June 2, 2005)

San Diego Gas & Electric Company (U 902-E),  
for Approval of Electric and Natural Gas Energy  
Efficiency Programs and Budgets for Years 2006  
through 2008.

Application 05-06-016  
(Filed June 2, 2005)

**SOUTHERN CALIFORNIA EDISON COMPANY'S RESPONSE TO THE  
APPLICATION FOR REHEARING OF DECISION 06-12-013**

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**SOUTHERN CALIFORNIA EDISON COMPANY’S RESPONSE TO THE  
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**I.**

**INTRODUCTION**

Pursuant to Rule 16.1(d) of the Rules of Practice and Procedure of the California Public Utilities Commission (the Commission), Southern California Edison Company (SCE) respectfully submits this Response to the Application for Rehearing of Decision (D.) 06-12-013 (the Decision) submitted jointly by The Utility Reform Network (TURN) and Division of Ratepayer Advocates (DRA) (together as Applicants) on January 16, 2007. SCE respectfully requests that the Commission deny the Application for Rehearing. Applicants simply reargue old positions that the Commission wisely rejected in the Decision based on a full and complete evidentiary record.

The Decision authorizes the City of Palm Desert Partnership Demonstration Project (“Demonstration Project”) for the remainder of the 2006-08 energy efficiency program cycle, including specifically, a Thermal Energy Storage (TES) demonstration pilot.<sup>1</sup> As the Commission found in approving the Demonstration Project, these efforts will enable the Palm Desert Partnership to leverage the unique commitment to energy efficiency of the City of Palm Desert to aggressively pursue an unprecedented 30% citywide reduction in demand and energy consumption, while testing the efficacy of early equipment replacement and TES strategies in this important customer market.<sup>2</sup>

Throughout the underlying proceeding, Applicants opposed the inclusion of TES as part of the Demonstration Project, as evidenced by their repeated attempts to exclude TES from this project.<sup>3</sup> Having failed to provide a sound basis for excluding this important element of the Demonstration Project, Applicants now attempt another “bite of the apple” in the most recent Application for Rehearing. As discussed below, Applicants fail to meet their burden of proving that the Commission’s decision is unlawful or erroneous.<sup>4</sup> Having failed to provide a justifiable basis for reopening this issue, Applicants’ request for rehearing must be denied.

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<sup>1</sup> See D.06-12-013 at Ordering Paragraph 1, Conclusion of Law 6 (“Thermal Energy Storage . . . can and should be allowed as a non-precedential pilot program as part of the Palm Desert Pilot”).

<sup>2</sup> See D.06-12-013 at Conclusion of Law 6, Finding of Fact 6.

<sup>3</sup> See Response of the Division of Ratepayer Advocates and The Utility Reform Network to Southern California Edison Company’s Petition for Modification of Decision 05-09-043, Interim Opinion: Energy Efficiency Portfolio plans and Program Funding Levels for 2006-2008 – Phase I Issues, filed on July 26, 2006 at pp. 9-11 (opposing inclusion of TES in Demonstration Pilot); Response of the Division of Ratepayer Advocates and The Utility Reform Network to Southern California Edison Company’s Response to ALJ Gamson’s Questions and Amendment to the Previously filed DRA/TURN Joint Response to Petition for Modification, filed September 19, 2006 at pp. 4-6 (arguing that TES should not receive Energy Efficiency funding as part of the Demonstration Pilot); Comments of The Utility Reform Network and The Division of Ratepayer Advocates on the Palm Desert Proposed Decision of Administrative Law Judge Gamson, dated December 4, 2006, Section III, at p. 4 (arguing TES should be kept separate from Energy Efficiency portfolio).

<sup>4</sup> See Rule 16.1 of the Commission’s Rules of Practice of Procedure.

## **II.**

### **THE APPLICATION FAILS TO PROVE THE DECISION WAS UNLAWFUL OR ERRONEOUS**

Rule 16.1 of the Commission’s Rules of Practice and Procedure makes clear that “the purpose of an application for rehearing is to alert the Commission to a legal error, so that the Commission may correct it expeditiously.” As the moving parties, the burden of proving legal error that would justify rehearing lies solely with Applicants. If Applicants fail to demonstrate legal error, the Application for Rehearing should be denied.

#### **1. The Commission did not Commit Legal Error in Issuing the Decision because the Findings of Fact and Conclusions of Law are Sufficient**

The Application for Rehearing erroneously alleges that the Decision does not provide Findings of Fact and Conclusions of Law adequate to satisfy Public Utilities Code (PUC) Sections 1705 and 1757.<sup>5</sup> Applicants’ claims are erroneous in that D.06-12-013 does indeed provide “findings of fact and conclusions of law by the commission on all issues material to the order or decision” consistent with PUC Sections 1705 and based on substantial evidence on the record, as required by PUC Section 1757.<sup>6</sup> As explained below, the very issues raised in the Application were argued extensively at multiple times throughout this proceeding, with vigorous debate on the issues of not only including TES in the Demonstration Pilot in order to achieve actual demand reduction results (and not merely “test” technology as Applicants allege), but also specifically about whether these results should count towards the Energy Efficiency goals and shareholder incentives. This record on these explicit issues makes clear that the Commission had substantial evidence before it when it rendered its Decision to include TES as part of the Demonstration Project, thereby rejecting Applicants’ arguments.

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<sup>5</sup> Application for Rehearing, pp. 3-4.

<sup>6</sup> California PUC §§ 1705, 1757.

In their Application for Rehearing, Applicants assert that it is erroneous for the Decision to permit SCE to count the energy and demand savings towards its goals and incentives because TES does not constitute an approved energy efficiency measure.<sup>7</sup> It is Applicants' argument that is erroneous, not the Decision.

In the Decision, the Commission found that "SCE has shown that significant peak reduction may be possible in Palm Desert under a TES pilot"<sup>8</sup> which establishes that the Commission's inclusion of TES was focused on achieving peak reduction *results*. Moreover, the Commission stated that even though TES may not be an energy savings measure, the Commission wished to use its discretion to authorize SCE to "conduct a pilot program with *potentially beneficial results*," acknowledging that reducing peak load is "one aspect of energy efficiency."<sup>9</sup> Indeed, contrary to Applicants incorrect depiction that the approval of TES was only to test the technology, the Decision makes clear that TES may produce true *results* that would impact SCE's demand reduction portion of the energy efficiency goals.

In short, the Commission had a full record of evidence regarding TES, and its Decision is supported by the evidence, as seen by the clear language of the Decision. It is apparent from this record that the Commission approved the TES pilot for the potential demand reductions it may contribute towards the Demonstration Project. Not being satisfied with the judgment of the Commission after such debate and consideration, Applicants improperly attempt to reargue their same positions in the Application for Rehearing. Simply put, it is inappropriate for Applicants to claim the Decision is based on error for the mere reason that the Decision is contrary to Applicants' own positions. Applicants' disagreement or dissatisfaction with the Commission's findings do not render those findings erroneous or unlawful and do not constitute valid grounds for rehearing.

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<sup>7</sup> Application for Rehearing, at p. 6.

<sup>8</sup> D.06-012-013, *mimeo*, at p. 18 .

<sup>9</sup> D.06-012-013, *mimeo*, at p. 19 (emphasis added), stating "We do know that there are both potential benefits from reducing peak load (one aspect of energy efficiency) and potential down sides to TES."

The Commission should summarily deny the Application.

**2. The Decision is Clear that Energy Savings from Thermal Energy Storage Projects Will Count Towards the Energy Efficiency Goals and Shareholder Incentives**

Applicants claim that the Decision is not clear regarding whether TES energy savings will count towards SCE's Energy Efficiency goals or shareholder incentives. In fact, the Decision is clear that TES savings *will* count. In authorizing SCE to use energy efficiency funds, as opposed to ordering incremental funds for this project, the Commission made clear that the TES pilot was included as part of the overall Demonstration Pilot, which clearly constitutes part of the EE portfolio. Indeed, this very issue was explicitly debated and fully resolved by the Decision.

In Applicants' joint comments on the proposed order, they specifically argued that TES should be kept entirely separate from SCE's energy efficiency portfolio because they alleged that TES could have a negative impact to energy savings (although still acknowledging the positive impact to peak demand reduction).<sup>10</sup> In response, SCE argued that "the Demonstration Project should be included as part of, and not separate from, SCE's energy efficiency portfolio, and SCE should be able to count the savings towards the achievement of the Commission's aggressive energy efficiency goals."<sup>11</sup> Indeed, SCE pointed to the Commission's energy efficiency goals which include *both* energy savings and demand reduction goals.<sup>12</sup> Further, SCE noted that "as for any nominal negative energy savings impact [from TES], SCE proposes to adjust the overall

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<sup>10</sup> See Comments of The Utility Reform Network and The Division of Ratepayer Advocates on the Palm Desert Proposed Decision of Administrative Law Judge Gamson, dated December 4, 2006, Section III, at p. 4.

<sup>11</sup> Southern California Edison Company's Reply Comments on the Proposed Order Approving Petition for Modification of Decision 05-09-043, with Modification, filed on December 11, 2006, including an entire section entitled "The Energy Saving and Demand Reduction Results from Palm Desert Should Count Towards The Commission's Aggressive Goals Set For SCE's Service Territory"

<sup>12</sup> Southern California Edison Company's Reply Comments on the Proposed Order Approving Petition for Modification of Decision 05-09-043, with Modification, filed on December 11, 2006, at p. 4.

energy savings from the Demonstration Project to account for any negative impact that may occur from this technology.” Thus, the evidence on the record is clear that SCE fully intends to count all energy and demand savings from TES, whether positive or negative, towards its goals and incentives. In rejecting Applicants’ position and in adopting SCE’s request, the Commission had a full record of evidence concerning these issues, and by adopting SCE’s request to include TES as part of the Demonstration Pilot, necessarily permitted SCE to count the energy savings towards meeting SCE’s aggressive Energy Efficiency goals and for purposes of calculating shareholder incentives.

The fact that the Commission did not create an explicit exception for the TES makes clear that TES should be treated as any other energy efficiency measure and that any measurable, verified energy savings will count towards the goal. Applicants own argument analogizing to the explicit exclusion of the separate water efficiency projects from incentive calculations actually supports the finding that TES results *do* count towards goals and shareholder incentives. Where the water efficiency project was funded through incremental funding with the specific exclusion, the Decision’s authorization for SCE to fund TES with energy efficiency funding without a specific exclusion confirms that such savings *will* count, both towards goals and shareholder incentives.

As such, there is no need to “clarify” the Commission’s intent or otherwise reopen these issues on rehearing. To the extent the Commission feels additional clarity may be warranted, such clarification should confirm that it is appropriate to count TES results towards goals and incentives based on the fact that TES was approved because of the beneficial results it is expected to provide in the peak reduction aspect of energy efficiency goals. Joint Parties’ Application lacks sufficient grounds requiring the Commission to reconsider any of the issues raised in the Application. Accordingly, the Commission should deny Joint Parties’ Application in whole.



### **III.**

#### **CONCLUSION**

SCE appreciates the opportunity to file these comments. For the foregoing reasons, SCE respectfully requests the Commission deny the Application in its entirety.

Respectfully submitted,

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**January 31, 2007**

**CERTIFICATE OF SERVICE**

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of **SOUTHERN CALIFORNIA EDISON COMPANY'S RESPONSE TO THE APPLICATION FOR REHEARING OF DECISION 06-12-013** on all parties identified on the attached service list(s).

Transmitting the copies via e-mail to all parties who have provided an e-mail address. First class mail will be used if electronic service cannot be effectuated.

Executed this **31st day of January, 2007**, at Rosemead, California.

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**A.05-06-004**

Wednesday, January 31, 2007

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BRAUN & BLAISING P.C.  
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**A.05-06-004**

Wednesday, January 31, 2007

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**A.05-06-004**

Wednesday, January 31, 2007

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EDWARD VINE  
LAWRENCE BERKELEY NATIONA LAB  
BUILDING 90-4000  
BERKELEY, CA 94720  
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ERIC WANLESS  
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HUGH YAO  
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MRW & ASSOCIATES, INC.  
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A.05-06-004

**A.05-06-004**

Wednesday, January 31, 2007

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